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10/782,237	02/19/2004	Patrick Rooney Conarro	CID-0401	5192

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LAW OFFICE OF DALE B. HALLING, LLC
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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 04/26/2006

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/782,237
Filing Date: February 19, 2004
Appellant(s): CONARRO ET AL.

Dale b. Halling
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 17, 2006 appealing from the Office action
mailed September 9, 2005

Art Unit: 3727

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection is substantially correct.

The objection to claim 20 mentioned as item No. 8 is a petitionable matter rather than an appealable matter.

Art Unit: 3727

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

Patents:

D489,579	Wright	05-2004
6,702,141	Cinque	03-2004
5,921,423	Howell et al.	07-1999
5,857,583	Chantaca et al.	01-1999
D398,480	Panta Chica	09-1998
5,482,095	de Chollet	01-1996
5,259,528	Pace et al.	11-1993
4,399,668	Williamson	08-1983

(9) Grounds of Rejection

The rejections will be changed from the rejections made in the final rejection mailed September 9, 2005 in the following manner: (1) The rejections made under 35 U.S.C. 102 have all been omitted, these rejection correspond to items 1-3 of appellant's stated grounds of rejection. (2) The rejections made under 35 U.S.C. 103 will all eliminate the Young, Sr. (5,118.063) reference, these rejections correspond to items 4-7 of appellant's stated grounds of

Art Unit: 3727

rejection. This is not believed to substantially change the grounds of rejection as references have only been removed to clarify the issues for appeal and no references have been added, items 5 and 6 are identical grounds of rejection.

The following ground(s) of rejection are applicable to the appealed claims:

Item 4: Claims 1-6, 10, 13 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pace or Panta Chica in view of Cinque.

Pace discloses a combination meal serving tray, comprising a housing shaped to have a wide food well end and a narrow cup well end, the housing has legs (receptacles 13, 14), a food well (one of compartments 15) and a cup well (receptacle 12) acting as a third leg, the cup well has structural ribs 19 and compressible ribs 17.

Re claim 10, the first and second food wells are compartments 15, the arm impression is opening formed beneath compartments 15 between the cup well and the legs.

Re claim 13, the tapered configuration of the cup well and receptacles 13 and 14 allows nesting.

Re claim 15, openings are provided between the pair of legs both above the bottom of compartment 15 as well as below the bottom of compartments 15.

Re claim 18, horizontal nesting is provided by the ability to situate like trays horizontally adjacent and touching each other.

Pace best shows the structure of claims 1-3, 10, 13 and 15-19. Panta Chica best shows the structure of claims 1, 4-6, 10 and 13.

Art Unit: 3727

Panta Chica discloses a combination meal serving tray, comprising a substantially pear shaped housing having legs (at the front end as shown in Fig. 1), a food well (the two forwardmost compartments as shown in Fig. 1) and a cup well (the rearwardmost compartment as shown in Fig. 1) acting as a third leg, the food well has an arch as the bottom of the forwardmost compartment as that portion which contacts the supporting surface as is best seen in the front views of Fig. 1 and 12 and the cutout is the outwardly concave curve at an upper end of the arch. An outwardly extending lip is formed along a top edge.

Re claim 10, the upper portion of the arch forms an arm impression formed in the bottom of the first food well.

Re claim 13, the compartments are tapered and nesting is a capability.

Pace and Panta Chica disclose the invention except for the precisely pear shape of the top view profile of the meal serving tray.

Cinque teaches a pear-shaped housing as best shown in the top perspective view of Fig. 2 having a circular food well and a smaller circular cup well. It would have been obvious to modify the configurations of the housings of Pace and Panta Chica to be pear-shaped. The large end of Pace's tray with the two food compartments would be formed to be circular while keeping the leg forming receptacles 13 and 14 at the food compartment end and while maintaining the circular cup well shape. Panta Chica's three circular middle wells of similar size could be eliminated if deemed unnecessary and the arc or crescent shaped compartment would be incorporated as a chamber of the largest circular compartment to provide a tray consisting of one large circle for retaining food and one small circle for retaining a drink. The combination of Pace and Panta Chica in view of Cinque would be motivated by the following improvements of

Art Unit: 3727

efficiency (1) saving weight and decreasing the size of the meal tray to conserve space, (2) saving material by making the tray from less plastic, thus saving shipping costs as well and (3) making the tray easier to handle due to less bulkiness of the tray. The space efficiency achieved by Cinque can be readily seen and applied to almost any meal type container. It would also have been obvious to modify the trays of Pace and Panta Chica without the need of a reference as the elimination of unneeded wells or compartments and the reshaping of food wells are obvious in view of the improvements of efficiency mentioned above.

Item 5: Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pace or Panta Chica in view of Cinque and further in view of Chantaca, Wright and Howell et al. (Howell).

The combination discloses the invention except for the lid. Chantaca, Wright and Howell, all teach a lid. It would have been obvious to add a lid in order to protect the food well compartments from contamination to preserve the freshness, taste and hygiene of the food.

Item 6: Claims 11, 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pace and Panta Chica in view of Cinque and further in view of Chantaca, Wright and Howell et al. (Howell).

The combination discloses the invention except for the lid. Chantaca, Wright and Howell, all teach a lid. It would have been obvious to add a lid in order to protect the food well compartments from contamination to preserve the freshness, taste and hygiene of the food.

Art Unit: 3727

Item 7: Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pace and Panta Chica in view of Cinque and further in view of de Chollet, Williamson and MacGregor, Jr. (MacGregor).

The combination discloses the invention except for the compressible rib thickness. De Chollet teaches compressible ribs 30a, 30b that have a thickness less than the rest of the housing. Williamson teaches compressible ribs of insulative fabric 22 which are of a thickness less than the thickness of the housing that has layers 22 and 25. MacGregor teaches compressible ribs 15 having a thickness less than the rest of the housing. It would have been obvious to modify the thickness of the ribs to be less than the thickness of the rest of the housing in order to flex before the wall of the housing flexes to provide contact which will space the housing from the beverage container or the item held within the cup well.

(10) Response to Argument

Pear Shaped ?

The claims state “substantially pear shaped.” An Asian pear has a substantially spherical shape and a Bartlett pear has a substantially spherical shape with a protruding, rounded end. Every pear is shaped differently than a sphere with flattened portions, protruding portions and indentations. Insofar as the drawings of the present invention don’t depict anything close to a sphere, the pear shaped limitation is interpreted to mean the profile of a pear. The profile of a pear is a substantially circular or arcuate shape that may have flattened portions, protruding

Art Unit: 3727

portions or indentations. A plan view profile of (1) Pace discloses flattened portions as well as arcuate portions and (2) Panta Chica discloses arcuate portions.

Item 4: 103 Rejection – Pace and Panta Chica in view of Cinque

Appellant separately argues the references. Pace and Panta Chica are not pear shaped and Cinque doesn't show the three legs with the cup well acting as the third leg. These individual arguments do not properly rebut the obviousness rejection where the references rely upon each other for the missing teaching or structure.

Appellant states that Cinque never supplies a reason for being pear shaped. Cinque mentions the advantages of a first large end for a food plate a second smaller end for a drink and that there is "a first circular recessed portion" and that the second end includes "a circular hole," see col. 1, line 65 to col. 2, line 7. Cinque mentions a neck joining the first end to the second end, see col. 2, lines 23-32. The pear shape is formed from top to bottom by (1) a small circle, (2) a neck and (3) a large circle.

Appellant states that Pace clearly shows that reference sign 17 is not a rib. Element 17 is a protrusion that is elongated and "tear shaped", the material of the protrusion 17 is "sufficiently resilient" and has a "spring-like action." An elongated protrusion is the definition of a rib.

Appellant admits on the record that Panta Chica shows an arch in Fig. 1. The statement that Fig. 3 makes it clear that the arch is not part of the food well is not well taken as the crescent shaped compartment is capable of holding seeds, raisins, chips or crackers.

Appellant states that none of the prior art references have a lip along the top edge of the food well. Panta Chica has a lip along the top edge of the food well.

Art Unit: 3727

Items 5-7: 103 Rejections

These rejections are not contested. An argument providing a reasoned analysis has not been provided. Appellant merely cites *Medtronic, Inc. v. Cardiac Pacemakers, Inc.* Therefore, no further response is necessary.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Stephen Castellano

Stephen Castellano
Primary Examiner

Conferees:



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Jes F. Pascua